



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEROME T. WILSON,

Petitioner,

vs.

S. JOHNSON, T. CRAWLEY,
D. TAYLOR, K. T. SMITH,
GEORGE FREITAS, B. CURRY,
and J. R. CONTOS,

Respondents.

Case No. CV 06-3640-AHS (OP)

ORDER ADOPTING FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the has reviewed the Motion to Dismiss, all the records and files herein, and the Report and Recommendation of the United States Magistrate Judge. The Court concurs with and adopts the findings, conclusions, and recommendations of the Magistrate Judge.

IT IS ORDERED that Judgment be entered (1) granting Defendants' Motion to Dismiss for failure to exhaust state remedies with respect to the claim for damages against Defendant Johnson, relating to allegations of Defendant Johnson's deliberate indifference to Plaintiff's medical needs, and directing that Judgment be entered dismissing that claim without prejudice; (2) granting Defendants' Motion to Dismiss with respect to the claims against Defendants Curry, Taylor, and Freitas based on a theory of *respondeat superior*, and dismissing those claims with leave

1 to amend; (3) granting Defendants' Motion to Dismiss for failure to allege
2 sufficient facts with respect to the claims against Defendants Crawley, Taylor,
3 Freitas, Curry, and Contos, and dismissing those claims with leave to amend; (4)
4 granting Defendants' Motion to Dismiss Plaintiff's claim for retaliation against
5 Defendant Johnson for failure to plead the lack of a legitimate correctional goal, and
6 dismissing that claim with leave to amend; (5) denying Defendants' Motion to
7 Dismiss Plaintiff's due process claim against Defendant Smith; and (6) denying
8 Defendants' Motion to Strike Plaintiff's claim for punitive damages.

9 If Plaintiff wishes to proceed on the only remaining claim relating to the due
10 process claim against Defendant Smith, he may do so. However, if Plaintiff still
11 wishes to pursue the claims that are subject to dismissal with leave to amend, he
12 shall have thirty days from the date of the entry of Judgment within which to file a
13 First Amended Complaint, attempting to cure the defects in the original Complaint.
14 The First Amended Complaint shall be complete in itself and must remedy the
15 deficiencies discussed. Plaintiff may not use "et al." in the caption but must name
16 each defendant against whom claims are stated. Defendant Taylor, now deceased,
17 should not be named as a Defendant. Furthermore, Plaintiff must use the blank
18 Central District Civil Rights Complaint form accompanying this order, must sign
19 and date the form, must completely and accurately fill out the form, and must use the
20 space provided in the form to set forth all of the claims that he wishes to assert in
21 his First Amended Complaint. The Clerk is directed to provide Plaintiff with a
22 blank Central District Civil Rights Complaint form. The First Amended Complaint
23 shall not refer to the original Complaint.

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1 If Plaintiff does not file a First Amended Complaint within the time specified,
2 Defendants shall have thirty days thereafter to file an Answer to the original
3 Complaint as to Plaintiff's remaining due process claim.

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5 DATED: JAN - 2 2008


6 HONORABLE ALICEMARIE H. STOTLER
7 Chief United States District Judge

8 Prepared by:

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10 HONORABLE OSWALD PARADA
11 United States Magistrate Judge